

Exhibit 1

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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KPM ANALYTICS NORTH AMERICA CORPORATION,

Civil Action No.
Plaintiff, 21:-10572

- v. -

BLUE SUN SCIENTIFIC, LLC, THE INNOVATIVE
TECHNOLOGIES GROUP & CO., LTD., ARNOLD
EILERT, MICHELLE GAJEWSKI, ROBERT GAJEWSKI,
RACHAEL GLENISTER, GREGORY ISRAELSON, IRVIN
LUCAS AND PHILIP OSSOWSKI,
Defendants.

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30(b)(6) DEPOSITION
VIA ZOOM VIDEOCONFERENCING
OF

KPM ANALYTICS NORTH AMERICA CORPORATION
BY AND THROUGH
ERIC OLSON

Wednesday, July 7, 2021

Reported By:
LINDA J. GREENSTEIN
JOB NO. 4695539

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2 A. As understood at this point, I
3 would consider that that's all being
4 discovered and understood.

5 Q. You characterize the trade
6 secrets as including: "KPM Analytics
7 precise datasets, calibration model sets
8 and software tools."

9 There's nothing in that
10 characterization that reflects on the sales
11 of the actual NIR spectroscopy machines.

12 Is there anything about the
13 machines themselves that contain trade
14 secrets?

15 A. Could you restate that again,
16 please?

17 Q. I'll add context.

18 Blue Sun is selling NIR
19 spectroscopy machines. They are also
20 providing services.

21 Is there anything inherently
22 unfair about their sales of machines?

23 A. No, there's none.

24 Q. And so those machines are
25 primarily hardware, not software.

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2 Is it fair to say that there is
3 no trade secret embodied in the hardware?

4 MR. MAGEE: Objection.

5 You can answer.

6 A. There are many trade secrets
7 embedded inside of the hardware.

8 Q. Can you be specific and identify
9 them?

10 A. It would be several types of
11 signal processing, electronics, circuit
12 design, data handling techniques. There
13 are protected, patented mechanical designs
14 for the system itself.

15 Q. Okay. And these mechanical
16 designs and circuit designs, are they in
17 the SpectraStar XL?

18 A. Some are in the XL. Some are in
19 XT. It has been a continuation of
20 development of that platform for -- since
21 its existence.

22 Q. And does KPM sell the XL or the
23 XT to customers?

24 A. KPM sells XTs currently to
25 customers.

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2 Q. Have you seen that?

3 A. Can you say that again?

4 Q. Have you seen, personally seen
5 that agreement with Mr. Wilt?

6 A. Yes.

7 Q. Why didn't you produce it in
8 response to our document requests?

9 MR. MAGEE: Objection.

10 Q. You characterize KPM's trade
11 secrets as including datasets, calibration
12 model sets or software tools in the
13 complaint; is that correct?

14 A. Yes.

15 (Reporter clarification.)

16 BY MR. CRAIG:

17 Q. Mr. Olson, can you take a look
18 at paragraph 99 of the complaint.

19 A. Okay. I see it.

20 Q. You characterize KPM's trade
21 secrets as including but not being limited
22 to datasets, software tools, technical
23 knowledge and customer information; is that
24 correct?

25 A. Yes.

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2 Q. Can you explain what those
3 datasets are?

4 A. For this particular discussion,
5 datasets would include various items, one
6 it would be datasets of any technical
7 information during development, statistical
8 data collected on system performance,
9 operation of system underlying algorithms
10 that are used inside of the system and how
11 they performed, technical documentation,
12 verification and validation of system
13 performance, hardware performance.

14 Studies, data collection around
15 hardware components, replacement
16 components, design and test experiments
17 that were completed with hardware.

18 Datasets would also include the
19 work product of our technical account
20 managers, application specialists,
21 chemometricians, scientists that were
22 related to any products measured, samples
23 collected, samples analyzed.

24 The process for analyzing the
25 samples, process for determining the best

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2 methods for sample preparation, sample
3 delivery to the spectrometer or systems,
4 results of the data, the value of the data,
5 how it connected to the system performance.

6 Those datasets in their direct
7 connection to product output, what we call
8 constituents, a calculation of the
9 constituents, the effect of the
10 constituents with regards to any and all
11 variables that could be determined during
12 testing, including scans of product and
13 sample supplied to Unity, KPM, as part of a
14 development or test of applications or
15 calibrations in part with customers,
16 representatives, agents, and internal
17 discovery.

18 The digestion of that data,
19 signal processing of that data, the
20 preconditioning of that data, the
21 connection of how that data relates to the
22 end constituent products.

23 The formation of that data into
24 multiple sets of data tied to calibrations,
25 calibration matrices to specific products

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2 and the delivery of those through the
3 mathematical calculations to create a
4 calibration or a product and output that
5 you would run under our SpectraStar NIR
6 systems.

7 Q. That's quite a long list.

8 But the paragraph in question
9 accuses defendants of having wrongfully
10 misappropriated, disclosed and/or used
11 Plaintiff's proprietary and confidential
12 information and trade secrets.

13 Are you contending that the
14 defendants have misappropriated that entire
15 laundry list of trade secrets?

16 A. It's still under discovery.

17 Q. What are the software tools?

18 A. As part of our business, we have
19 applications that we develop, particularly
20 in this would be UScan or UCalibrate or
21 ULock, as well, these are our main
22 applications that run with our system.

23 We have several scripts, VB
24 code, Excel-driven VB manipulations, Excel
25 sheets for service and maintenance.

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2 There are these tools that are
3 used that have been created for support of
4 our products.

5 Q. Which of those tools does KPM's
6 customers use?

7 A. KPM customers would use UScan
8 and UCalibrate.

9 Q. Can you explain what UScan does?

10 A. UScan is the application that
11 runs on the embedded computer inside of a
12 SpectraStar XT. UScan is -- it takes the
13 data from the internal hardware and does
14 all of the calibration processing, data
15 management, the graphical user interface
16 presentation to a user and does the data
17 management for running tests on the
18 SpectraStar.

19 Q. And can you explain UCalibrate?

20 A. So UCal, different than
21 UCalibrate, UCal is a tool that is sold for
22 customers to use to create calibrations.
23 It creates an output that is then used by
24 UScan to run those created calibrations.

25 Q. How do you know that Blue Sun

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2 repairs, calibrates and monitors KPM NIR
3 analyzers using KPM datasets, calibration
4 model sets or software tools?

5 MR. MAGEE: Objection.

6 You can answer.

7 A. The materials that have been
8 provided as part of this Verified Complaint
9 go through several different cases of seen
10 usage of our datasets.

11 Q. Can you be specific and explain
12 what those seen usages are?

13 A. If we look at the complaint
14 starting at paragraph 68, subsequently
15 through 68 through at least 80, discusses
16 in-depth the use of one specific example of
17 a calibration dataset that was shown to be
18 used by Blue Sun Scientific on their
19 website. This directly...

20 Q. You're referring to the
21 application now; correct?

22 A. Correct.

23 Q. Are there any other examples of
24 Blue Sun repairing, calibrating or
25 monitoring KPM NIR analyzers using KPM

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2 datasets, calibration model sets or

3 software tools?

4 I'm sorry, Mr. Olson, I heard
5 something and I'm not sure what it was?

6 For the record, can you verify?

7 A. I've not made a response. I was
8 still reviewing the complaint to find the
9 specific item I was looking to talk about.

10 Can you restate the specific
11 question again too, please?

12 Q. Are there any other examples,
13 aside from the one application in the
14 complaint, that you know of in which Blue
15 Sun repaired, calibrated or monitored KPM
16 NIR analyzers using KPM datasets,
17 calibration model sets or software tools?

18 A. In the Verified Complaint, we
19 discuss in paragraph 44 of the usage at
20 Post Foods in Battle Creek, where software
21 tools were used and possibly datasets.

22 Q. Paragraph 44 describes how Mr.
23 Gajewski traveled to Battle Creek, Michigan
24 to service a NIR spectrometer.

25 It does not allege that he used

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2 KPM datasets.

3 A. Correct, it does not. The post
4 documentation -- and you asked about
5 software tools as well.

6 Q. Yes. Do you contend that when
7 he went to Battle Creek, Michigan, he used
8 KPM datasets or software tools?

9 A. Yes.

10 Q. How do you know that?

11 A. The documentation that we had
12 from Mr. Gajewski's computer, it showed
13 copies of KPM software tools that were
14 relabeled "Blue Sun Scientific."

15 Q. What KPM software tools were
16 relabeled "Blue Sun Scientific"?

17 A. It was a series of PM checklist
18 tools and a service reporting tool.

19 Q. What is the PM checklist tool?

20 A. It is a document and checklist
21 for performing maintenance on a
22 SpectraStar. Depending upon the version,
23 there are different: XT, XL, 2400. There
24 are several different versions of these.

25 Q. Are you saying these are

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2 forms --

3 A. These are tools, yes, they are a
4 form.

5 (Reporter clarification.)

6 BY MR. CRAIG:

7 Q. Mr. Olson, you used the word
8 tool. Are you referring to forms?

9 A. Yes, I would consider "forms"
10 tools.

11 Q. Do you contend that KPM has a
12 trade secret proprietary interest in these
13 forms?

14 A. Yes.

15 Q. What efforts does KPM make to
16 keep these forms secret?

17 A. These forms are used internally
18 by KPM employees and certified
19 distributors.

20 Q. Are KPM employees and certified
21 distributors warned not to use these forms
22 externally?

23 A. KPM employees/distributors are
24 all warned about trade secrets, tools,
25 documents, in several...

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2 theft of a trade secret?

3 MR. MAGEE: Objection.

4 Calls for a legal conclusion.

5 MR. CRAIG: Actually, that's a
6 factual conclusion.

7 Numerous times in the
8 complaint -- we can go back and read
9 some of these paragraphs -- Mr. Olson
10 accuses Ms. Glenister and the other
11 individuals of unlawfully running away
12 with trade secrets and using them to
13 usurp customers.

14 MR. MAGEE: I'm standing by my
15 objection.

16 BY MR. CRAIG:

17 Q. Mr. Olson, do you consider
18 Ms. Glenister's customer relationships to
19 be the property of KPM?

20 A. Yes.

21 Q. What makes them the property of
22 KPM?

23 A. Employees of KPM, when they are
24 working with our customers, are building
25 information and knowledge about them, which

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2 is part of how KPM does business.

3 Understanding our customers' needs, what
4 they are requiring for hardware and units.

5 It's all part of the protected
6 materials for selling our unique offering.

7 Q. Is that true of all of KPM sales
8 representatives?

9 A. That may not be true for all of
10 KPM employees globally.

11 Q. What's the difference?

12 A. We have several different
13 business units that have different
14 structures for selling and want Unity
15 Scientific or KPM North America.

16 Q. When a sales representative in
17 America leaves KPM, how long is that
18 customer relationship KPM's property?

19 MR. MAGEE: Objection.

20 A. The terms should be consistent
21 with the employment agreements made prior
22 to employment in post-employment, based
23 upon contracts that are signed and NDAs.

24 Q. Okay.

25 (Exhibit 8 for

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2 preparation under the 30B, I believe is the
3 correct term, the areas for discovery.

4 And I spent time evaluating
5 those and trying to get as best the
6 information I could historically.

7 Q. The complaint in this case was
8 filed on April 5, 2021; correct?

9 A. Yes.

10 Q. And in the verification at the
11 end of that complaint, you, as the
12 verifying person, stated under the pains of
13 perjury that the facts in the verifying
14 complaint are true and accurate to the best
15 of your knowledge; right?

16 A. Yes.

17 Q. What fact or facts did KPM have
18 as of April 5, 2021 to support the claim
19 that Rachael Glenister copied, disclosed or
20 used a trade secret of KPM?

21 A. In the verified complaint, we
22 spoke about those opportunities, the
23 customer connections that Rachael Glenister
24 had. We then have an understanding of our
25 information and belief that were then

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2 converted to Blue Sun Scientific orders.

3 Q. What trade secrets did Rachael
4 Glenister take or use?

5 A. The access to the customer
6 information, customer list, contact
7 information for the customer, understanding
8 of the application itself could all be
9 things.

10 Q. I didn't ask you about what
11 could be.

12 As of April 5, 2021, what fact
13 did KPM have to claim that Rachael
14 Glenister took a trade secret from KPM?

15 MR. MAGEE: Objection.

16 Asked and answered.

17 A. William, are you waiting for me
18 for an answer?

19 Q. I am.

20 A. I believe I've already answered
21 the question.

22 Q. What facts did KPM have as of
23 April 5, 2021 that Ms. Glenister
24 misappropriated trade secrets of KPM?

25 A. As already stated in the

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2 A. The possession of a competitive
3 e-mail address, the use of the Zoho tool,
4 e-mail correspondence.

5 Q. Anything else?

6 A. I believe that was all of the
7 time.

8 Q. In those items you just
9 mentioned, what trade secret did Mr.
10 Israelson, in fact, use or take?

11 MR. MAGEE: Objection.

12 A. It is not clear.

13 Q. You're not aware of any;
14 correct?

15 A. I'm not aware of any.

16 Q. What about Mr. Eilert, what fact
17 or facts did KPM have as of April 5, 2021
18 that Mr. Eilert either used or
19 misappropriated a KPM trade secret.

20 A. I did not state in the
21 complaint. There was nothing referenced in
22 the complaint. Other than e-mails that had
23 been shared between -- as referenced in,
24 what, paragraph 42, conversations about UC
25 San Diego Medical Center in connection to

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2 the human milk application.

3 Q. In that e-mail that you just
4 referenced, is there any specific trade
5 secret that's either being used or
6 misappropriated by Mr. Eilert?

7 A. Sharing about the information
8 about a customer to an e-mail address
9 outside of the company, however, being sent
10 to a person who is still an employee of the
11 company.

12 Q. Is that your answer?

13 A. Yes.

14 Q. So what is the trade secret
15 that's being used there?

16 A. There was some discussion about
17 the specifics around the customer
18 engagement, that UC San Diego Medical
19 Center application. It's internal to KPM
20 with contact and connection to an external
21 customer. That would be a violation of our
22 agreements and IP for sharing that
23 information external of the business.

24 Q. Okay. Are you saying that that
25 is a misappropriation of the trade secret?

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2 A. Yes, it is.

3 Q. Aside from that, does KPM have
4 any other evidence that Mr. Eilert either
5 used or misappropriated a trade secret?

6 MR. MAGEE: Objection.

7 A. Not that I can recall.

8 Q. You're here testifying for KPM
9 so you don't have a chance to do this
10 again. So either KPM knows or does not,
11 and you need to give an answer for the
12 company.

13 A. As of the 5th, no, we do not.

14 Q. How about Michelle Gajewski,
15 what fact or facts did KPM have as of
16 April 5, 2021 that she either used or
17 misappropriated a KPM trade secret?

18 A. I would state that she was
19 involved in the same e-mail correspondence
20 referenced in paragraph 42, Arnold Eilert,
21 regarding the UC San Diego Medical Center.

22 She, in fact, resides with Rob
23 Gajewski and understands the actions that
24 he had been taking were done, work he had
25 completed.

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2 Sun is not aware of any confidential
3 information that Mr. Lucas has disclosed to
4 Blue Sun?

5 MR. MAGEE: Objection.

6 A. I couldn't speak to what Blue
7 Sun knows about what Blue Sun had provided
8 to itself.

9 Q. I'm not asking that.

10 I'm asking you what Mr. Lucas
11 disclosed, what KPM confidential
12 information Mr. Lucas disclosed to Blue
13 Sun?

14 A. That was not your question, sir.
15 It's stated in the article, in
16 the complaint. Mr. Lucas was involved in
17 some e-mails, correspondence, connection
18 with KPM customers about KPM products and
19 potential future opportunities.

20 Q. What KPM confidential
21 information did he disclose in those
22 communications?

23 MR. MAGEE: Objection.

24 A. Trade secrets of customer
25 accounts, service requests. It was also

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2 reference to e-mails we had seen about
3 replacement parts in connection with
4 distributors, Pro Analytics Australia being
5 one, that were involved with Mr. Lucas.

6 These reps, agents with
7 discussion about our business, how we work
8 with customers would all be trade secrets.

9 Q. What specific conversations are
10 you talking about now?

11 A. If we go to paragraph 50 of the
12 complaint, they discuss about e-mails of
13 Pro Analytics limited, spare parts that
14 were ordered, replacement components.

15 It's just a version of customer
16 sales, representative sales to Blue Sun.

17 Q. I don't see any confidential KPM
18 information discussed in paragraph 50.

19 Can you identify any?

20 A. Can we share Exhibit 15?

21 Q. I'm looking at 15.

22 A. I am not, though. I don't know
23 if it's in the tool to share about -- not
24 Exhibit 15 of the deposition, I'm sorry.
25 Exhibit 15 of the complaint.